



PROPOSED LEGISLATION FOR TEACHER INCENTIVES FOR SCHOOL EXCELLENCE AND EQUITY

Scott R. Bauries

University of Kentucky College of Law

January 2012

National Education Policy Center

School of Education, University of Colorado Boulder
Boulder, CO 80309-0249
Telephone: (802) 383-0058

Email: NEPC@colorado.edu
<http://nepc.colorado.edu>

This is one of a series of briefs made possible in part by funding from
The Great Lakes Center for Education Research and Practice.



Kevin Welner

Editor

William Mathis

Managing Director

Erik Gunn

Managing Editor

Briefs published by the National Education Policy Center (NEPC) are blind peer-reviewed by members of the Editorial Review Board. Visit <http://nepc.colorado.edu> to find all of these briefs. For information on the editorial board and its members, visit: <http://nepc.colorado.edu/editorial-board>.

Publishing Director: **Alex Molnar**

Suggested Citation:

Bauries, S.R. (2011). *Proposed Legislation for Teacher Incentives for School Excellence and Equity*. Boulder, CO: National Education Policy Center. Retrieved [date] from <http://nepc.colorado.edu/publication/creating-teacher-incentives>.

This material is provided free of cost to NEPC's readers, who may make non-commercial use of the material as long as NEPC and its author(s) are credited as the source. For inquiries about commercial use, please contact NEPC at nepc@colorado.edu.

PROPOSED LEGISLATION FOR TEACHER INCENTIVES FOR SCHOOL EXCELLENCE AND EQUITY

Scott R. Bauries, University of Kentucky College of Law

Introduction

Pursuant to the recommendations and findings in Dr. Barnett Berry's policy brief, the below proposed set of legislative enactments offers both monetary incentives and positive working conditions requirements likely to further three goals: (a) cause more effective teachers to choose to work in high-need schools and fields, (b) allow teachers already working in such contexts to develop and flourish professionally, and (c) decrease the attrition rate of such teachers from high-need schools, and indeed from teaching in general.

The accompanying policy brief contains analyses and recommendations on a variety of topics, each of which adds important contextual information helpful in thinking about incentives for teachers in the areas of recruitment, retention, and effectiveness. The model legislation itself is targeted specifically at goals in these three areas.

While some of the policy recommendations in the brief relate to federal, rather than state, efforts and policies, the model legislation that follows is tailored for adoption by states. Accordingly, policy recommendations that appear in Dr. Berry's brief but that fall outside the focused goal of providing incentives for desirable teacher behaviors are not reflected in the model legislation that follows. The same is true more generally of recommendations in the brief that can only be realized through federal legislation. Nevertheless, all of the recommendations and policy analysis contained in the accompanying brief informed the legal judgments that went into crafting the model legislation.

Because what follows is model legislation, an effort has been made to choose language that is adaptable to differing state policy environments. Where specific policy language choices have been made that may not be compatible with all states' constitutional and/or pre-existing policy requirements, a footnote is inserted in order to explain the ways in which the language may be modified.

A BILL FOR AN ACT

AN ACT CONCERNING THE CREATION OF TEACHER INCENTIVES FOR SCHOOL EXCELLENCE AND EQUITY.

Be it enacted by the General Assembly of the State of ABC that Title XXX is amended to include a new Article 123, which reads as follows:

ARTICLE 123

CREATING TEACHER INCENTIVES FOR SCHOOL EXCELLENCE AND EQUITY

Section 101. Legislative Declarations and Findings.

a. The General Assembly hereby finds, determines, and declares that:

1. The General Assembly's most important duty is its support of the state's public school system.
 2. All students within the state should have the opportunity to access a high-quality education through the state's public schools, if they choose to do so.
 3. Among the many factors influencing learning in the state's public schools, research shows that the service of a highly qualified, effective teacher in every classroom is the most important.
 4. Highly qualified, effective teachers are distributed unequally throughout the schools in the state, with fewer highly qualified, effective teachers teaching in high-need schools than in schools in more advantaged communities.
 5. Incentives are needed to:
 - (i) Encourage more highly qualified, effective teachers to teach in high-need schools;
 - (ii) Recruit more highly qualified, effective teachers to work in the state's public school system; and
 - (iii) Retain the highly qualified, effective teachers currently teaching in public schools within the state.
 6. Direct monetary incentives, while potentially important if set at meaningful levels, comprise only one type of incentive and only part of the solution to a statewide problem of inequitable

1 distribution, inadequate supply, and inadequate retention of
2 teaching talent. Teachers desire choice in how they receive
3 monetary benefits, and teachers' choices and actions may respond
4 to incentives through non-monetary factors, as well.

- 5 7. Among the most important motivational factors influencing
6 teacher effectiveness and retention are the working conditions in
7 schools.
- 8 8. Highly effective teachers tend to value professional autonomy,
9 collaboration, and opportunities to use and share their expertise.
- 10 9. Accordingly, the intent of the General Assembly is to provide for a
11 policy of creating effective incentives for high-quality teaching,
12 with the goals of distributing such high-quality teaching equitably
13 throughout the state **public school system's advantaged and**
14 **disadvantaged districts and schools, and increasing the total**
15 **number of highly qualified, effective teachers working in the**
16 **state's public schools.**

17 **THEREFORE, be it enacted:**

18 **Section 102: Definitions.**

19 a. For the purposes of this Article:

- 20 1. “Teacher” means a professionally certified person employed full-
21 time or part-time in the public schools of the state, where such
22 person maintains primary supervisory and pedagogical
23 responsibility for classroom students as the primary function of
24 the person’s job.
- 25 2. “Professionally certified” means holding a valid professional
26 teaching certificate issued by the state, or holding a valid
27 temporary teaching certificate issued by the state, regardless of
28 whether any such certificate was earned through traditional or
29 approved alternative means.
- 30 3. “Pre-service teaching candidate” means a person engaged in a
31 state-approved program of study in a public or private university
32 located in the state leading to teacher certification, or a person
33 engaged in a state-approved program of alternative teacher
34 certification.
- 35 4. “Prospective teacher” means a person seeking employment as a
36 full-time teacher.
- 37 5. “Preparation” means a separate and distinct course, as opposed to
38 a separate and distinct period of instruction during the school
39 day.

6. “Class” means a separate and distinct period of instruction during the school day.
 7. “Period” means a unit of time into which a school day may be divided. Each period may be designated as instructional or non-instructional.
 8. “Instructional period” means a period during which a teacher engages in direct instruction of students. “Non-instructional period” means a period during which a teacher does not engage in the direct instruction of students.
 9. “High-need school” means a school in which any of the following are true:
 - (i) More than 50 percent of the students attending the school receive federal free- or reduced-price lunch assistance;¹
 - (ii) Fewer than 50 percent of the students attending the school achieve minimum passing scores on the state-mandated yearly assessments of reading, mathematics, and/or writing; or
 - (iii) If the school is a high school, fewer than 60 percent of the students who begin the ninth grade at the school graduate high school within five years.
 10. “High-need field” means a subject field of teaching in which:
 - (i) The number of professionally certified persons holding secondary school teaching certificates in the subject area (or holding K-12 teaching certificates, in the case of special education), combined with the number of pre-service teaching candidates in their final year of study seeking teaching certificates in the subject area, in the state (excluding retirees) is smaller than the number of available positions teaching the subject field that must be filled in the state’s public schools for the upcoming school year.
 - (ii) Except in the subject fields of special education and English as a second or other language, only secondary school subject fields may qualify as high-need fields.
 11. “Scripted curriculum” means a pre-designed set of educational lessons containing a script or a set of directives for a teacher to

¹ Considering the differences in poverty rates among the states, this percentage may need to be adjusted up or down in a particular state.

2 Additional subjects would be included in states that test more subjects than these three.

1 follow, and from which deviation is either prohibited or strongly
2 discouraged.

3 **Section 201: Teacher Incentive Compensation.**

4 a. Recruitment and Retention Incentive Plan.

- 5 1. **This Section, which should be referred to as the “State Recruitment**
6 **and Retention Incentive Plan,” applies to both high-need schools**
7 **and high-need fields.**
- 8 2. Any teacher who meets the qualifications set forth in this Section
9 as relates to either a high-need school or a high-need field may
10 claim the relevant incentive(s) set forth herein. In the event that a
11 teacher meets the qualifications as relates to both a high-need
12 school and a high-need field, that teacher may claim the relevant
13 incentive(s) for both in the same year. However, where a teacher
14 claims an incentive or incentives for teaching in a high-need field,
15 that teacher may claim such incentive(s) (whether in isolation or
16 in combination with high-need school incentive(s)) for only one
17 field of teaching in a particular school year.

18 3. Minimum Qualifications for Incentive(s).

- 19 (i) Except as provided in Subsections a4(ii) and a4(iv),, to claim
20 the incentive or incentives set forth in this Section, a teacher
21 must:
22 A. Be a currently employed teacher in a high-need school on
23 April 15th of the year in which the incentive is to be claimed;
24 ³
25 B. Be a currently employed teacher of a subject that is in a high-
26 need field on April 15th of the year in which the incentive is
27 to be claimed; or
28 C. Meet both of these conditions on April 15th of the year in
29 which the incentive is to be claimed.
30 (ii) In addition to the minimum requirements set forth in
31 Subsection a3(i), a teacher seeking to claim an incentive or
32 incentives under this Section must receive an overall
33 evaluation score of at least satisfactory on the approved state
34 teacher evaluation instrument.⁴

3 Because some of the incentives are tax-based, this date may need to be adjusted depending on the state.

4 This specific designation (“satisfactory”) is an arbitrary placeholder, for the purposes of this model legislation. Some states and districts have numerical evaluations. Others have ranks such as “satisfactory” and “needs improvement.” Others may use value-added scores or disaggregated group scores. The point is to require a teacher to achieve a score or rank above the minimum acceptable score or rank on whatever teacher evaluation system the

- 1 4. Types of incentives.
- 2 (i) High-need schools incentives for existing teachers.
- 3 A. A teacher meeting the minimum requirements under
- 4 Subsection a3(i)A and Subsection a3(ii) may elect among the
- 5 following incentives:
- 6 (aa) A cash bonus payment from the state equal to 20 percent
- 7 of the average full-time teacher salary in the state for the
- 8 year that the incentive is claimed (excluding incentives
- 9 earned and claimed under this Section), payable in the
- 10 **teacher's final paycheck for the contract year in which the**
- 11 incentive is claimed;
- 12 (ba) A credit equal to 20 percent of the average full-time
- 13 teacher salary in the state for the year that the incentive
- 14 is claimed (excluding incentives earned and claimed
- 15 under this Section), to be applied to the total final state
- 16 income tax liability⁵ of the teacher claiming the incentive
- 17 for the year immediately preceding April 15th of the year
- 18 in which the incentive is claimed; or
- 19 (ca) A direct, lump sum payment from the state to a student
- 20 **loan servicing company of the teacher's choice equal to**
- 21 20 percent of the average full-time teacher salary in the
- 22 state for the year that the incentive is claimed (excluding
- 23 incentives earned and claimed under this Section).
- 24 (ii) High-need schools incentives for teacher recruitment.
- 25 A. A prospective teacher who has been hired to teach full-time
- 26 in a high-need school may qualify to claim an incentive
- 27 under Subsection a4(i)A only after that teacher has worked
- 28 in such school for at least one full contract year.
- 29 B. A prospective teacher who has been hired to teach full-time
- 30 in a high-need school may elect one of the following one-
- 31 time recruitment incentives on the date that the prospective
- 32 teacher begins service as a teacher in such school:
- 33 (aa) Any of the incentive options set forth in Subsection
- 34 a4(i)A; or
- 35 (ba) Cash assistance with a down payment and/or closing
- 36 costs on the purchase of a home in the service area of the
- 37 school where the teacher has been hired, equal to 30

state uses to qualify for the incentive. This requirement will be the subject of mandatory collective bargaining in some jurisdictions, as well.

5 Some states do not impose income taxes, and several others impose income taxes too low to make this credit meaningful. In such states, the credit could be applied to the state portion of the property tax bill (if any), as a refundable income or sales tax credit, or as a refundable credit on other assessments. The point is to allow for the option to take the monetary incentive as a tax benefit, rather than a cash bonus.

1 percent of the average full-time teacher salary in the state
2 for the year that the incentive is claimed (excluding
3 incentives earned and claimed under this Section),
4 payable at closing from the state treasury.

5 (iii) High-need field incentives for existing teachers.

6 A. A teacher meeting the minimum requirements under
7 Subsection a3(i)B and Subsection a3(ii) may elect among the
8 following incentives, without regard to the percentage of the
9 **teacher's day spent teaching in a high-need field:**

- 10 (aa) A cash bonus payment from the state equal to 20 percent
11 of the average full-time teacher salary in the state for the
12 year that the incentive is claimed (excluding incentives
13 earned and claimed under this Section), payable in the
14 **teacher's final paycheck for the contract year in which the**
15 **incentive is claimed;**
- 16 (ba) A credit equal to 20 percent of the average full-time
17 teacher salary in the state for the year that the incentive
18 is claimed (excluding incentives earned and claimed
19 under this Section), to be applied to the total final state
20 income tax liability of the teacher claiming the incentive
21 for the year immediately preceding April 15th of the year
22 in which the incentive is claimed; or
- 23 (ca) A direct, lump sum payment from the state, to a student
24 **loan servicing company of the teacher's choice, equal to**
25 **20 percent of the average full-time teacher salary in the**
26 **state for the year that the incentive is claimed (excluding**
27 **incentives earned and claimed under this Section).**

28 (iv) High-need field incentives for teacher recruitment.

29 A. A prospective teacher who has been hired to teach full-time
30 in a high-need field may qualify to claim an incentive under
31 Subsection a4(iii)A only after that teacher has taught in such
32 field for at least one full contract year.

33 B. A prospective teacher who has been hired to teach full-time
34 in a high-need field may elect one of the following one-time
35 incentives on the date that the prospective teacher begins
36 service as a teacher in such field, without regard to the
37 **percentage of the teacher's day spent teaching in a high-need**
38 **field:**

39 (aa) Any of the incentive options set forth in Subsection
40 a4(iii)A; or

41 (ba) Cash assistance with a down payment and/or closing
42 costs on the purchase of a home in the service area of the
43 school where the teacher has been hired, equal to 30
44 percent of the average full-time teacher salary in the state
45 for the year that the incentive is claimed (excluding

incentives earned and claimed under this Section), payable at closing from the state treasury.

Section 301: Working Conditions.

- a. Except where otherwise specified, this Subsection applies to all schools and all teachers in the state public school system.
 - b. To foster the positive working conditions that research has shown to be important to teachers and impactful on student achievement, the following requirements shall apply to all state-funded schools:
 1. Schools and school districts, in organizing and allocating teaching responsibilities among their teachers, shall strive to protect the planning and collaboration time that teachers need to be effective, and shall protect the needs of student learners by ensuring the presence of a highly qualified teacher in each classroom. Accordingly, absent a waiver of these requirements obtained from the State Commissioner of Education, state public schools and districts shall establish the following working conditions:
 - (i) No secondary school teacher shall be required to teach more than three distinct preparations during any one semester of the school year.
 - (ii) No teacher shall be employed or otherwise required to teach a subject or level of schooling which the teacher is not professionally certified to teach.
 - (iii) Every full-time teacher serving under a status other than continuing contract status⁶ shall be entitled to at least two non-instructional periods of at least 40 minutes each during the school day, in addition to the time allocated for lunch. One of these non-teaching periods may be used for general lesson planning and other tasks, while the other (the **“collaboration period”**) must be reserved for collaboration with other teachers in the school and/or the district, including the periodic observation of effective experienced teachers in the classroom. Each school shall provide a dedicated physical space and/or video conferencing equipment to enable such collaboration to occur during the collaboration period. At the beginning of each school year, the school or district may require each such teacher to create a professional development plan addressing the use of the collaboration period during that school year. Except as

⁶ In states without continuing contracts, alternative wording could be, "All teachers serving during the first three years of a teaching career . . ."

1 provided below, once a teacher has been awarded continuing
2 contract status, the teacher may be required to teach class
3 during the collaboration period, but she or he shall retain the
4 other non-teaching period.

5 (A) Every full-time teacher in a high-need school shall be
6 entitled to both a traditional planning period and a
7 collaboration period, as outlined above; provided, however,
8 that no such teacher shall lose such entitlement by virtue of
9 having been awarded continuing contract status.⁷

10 (iv) **No school shall require any of its teachers to use a “scripted”**
11 curriculum. Each teacher in the state school system is
12 entitled to reasonable pedagogical freedom of choice within
13 the state-approved curriculum; provided, however, that
14 nothing in this Subsection shall be construed to confer upon
15 a classroom teacher the right to be insubordinate, to ignore
16 administrative directives, or to work against the curricular
17 goals of the state or local school system.

- 18 2. A school or district may request in writing a waiver of one or more
19 of the above requirements from the Commissioner of Education.
20 The Commissioner shall duly consider each such request, and
21 shall grant a request only where a substantial necessity has been
22 shown for the waiver.
23 3. No waiver obtained under this Subsection shall be valid for more
24 than one school year.

25 **Section 401: Regulations.**

- 26 a. The Commissioner of Education is hereby directed to implement this Act
27 through appropriate regulations/policies.

7 Or by virtue of having achieved whatever milestone is appropriate to the relevant state.